IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 759 of 1999
in
SPECIAL CIVIL APPLICATION No 12850 of 1994
with
CIVIL APPLICATION No 11658 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

OIL AND NATURAL GAS CORPN LTD

Versus

ENGINEERING MAJDOOR SANGH

Appearance:

1. LETTERS PATENT APPEAL No. 759 of 1999

MR MJ THAKORE Senior Advocate with MR K.M. THAKER Advocate for M/S TRIVEDI & GUPTA for Appellant

MR GIRISH PATEL Senior Advocate with MR SHALIN N MEHTA Advocate for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 12/05/2005

C.A.V. JUDGEMENT

(Per: HON'BLE MR.JUSTICE D.H.WAGHELA for the Court:)

1. By this appeal under Clause 15 of the Letters Patent, the appellant ("ONGC" for short) has challenged the judgement dated 15/16.2.1999 of the learned Single Judge of this Court, whereby, after an elaborate discussion, reliefs as under were granted to the workmen concerned represented by the respondent trade union herein:

"15. The upshot of the aforesaid adjudication is that this Court finds that the impugned award dated 6th June, 1994 passed by the Industrial Tribunal (Central) at Vadodara, is required to be modified and the same is hereby modified as under:

(1) The relief will not be restricted only to those workmen whose names appear in the Schedule to the affidavit at Exh.48 which was filed by the ONGC before the Industrial Tribunal in the Complaint (ITC) 5 of 1993, but it will be available to all the employees who fulfil the requirements of completion of 240 days or more and the minimum qualifications under the ONGC (Recruitment and Promotion) Regulations, 1980 in accordance with the relevant Certified Standing Orders and in case they fulfil these requirements, all of them shall be considered at par with regular employees for the benefits which are given to regular employees, whether their names are there in the Schedule or not, whether they are members of the petitioner Sangh or not from the due date.

(2) All such employees who are found to be covered by the preceding para of the relief as modified by this Court, shall be treated at par with the other regular employees working against the

corresponding or equivalent/equated or identical posts and grant of such benefits shall not wait for the availability of the vacancies on the regular posts, of course, they will have to wait according to their turn for being made permanent as and when the permanent posts become available for this purpose, the age requirement shall be seen with reference to the point of time when such employees were initially employed instead of the relaxation as has been directed by the Industrial Tribunal in the impugned award.

(3) Whereas the status of regular appointee is to be given to the employees who are covered by the Standing Order No.2 (ii) as above on the basis of conversion, the requirement to compete with other workmen seeking employment through Employment Exchange or similar manner as has been mentioned by the Industrial Tribunal in the impugned award, simply does not arise.

16. This Special Civil Application accordingly succeeds in part and the impugned award dated 6th June, 1994 passed by the Industrial Tribunal (Central), at Vadodara, in Reference (ITC) No.6 of 1991 is modified in the terms as aforesaid and these modified terms would govern the rights and obligations of the parties. The respondent ONGC would take appropriate steps in accordance with the modified terms as aforesaid and issue appropriate orders for all the employees who are covered by these terms at the earliest possible opportunity, but in no case, later than 30th April 1999."

1.1 According to the order dated 16.12.2004 in this appeal, the respondent Union (original petitioner) has given up its claim for modification of the award in terms of direction No.1 in paragraph 15 quoted hereinabove, but pressed for implementation of directions No.2 and 3 (in respect of 156 employees who were covered by protective interim order of this Court). On the other hand, the learned Solicitor General stated that the ONGC, appellant

herein, did not press its challenge to direction No.3. In that view, the controversy and the appeal is now restricted to challenging direction No.2 only.

2. Tracing the journey of this litigation spreading over 25 years, it appears that the appellant, a giant Corporation which started with the staff strength of 450 employees in 1956, had, by the year 1979, 25000 employees. In the year 1991, the respondent Trade Union agitated the demands of their members who were recruited as "casual/contingent/temporary" workmen seeking regularisation of their services and their industrial dispute was referred to the Industrial Tribunal on 18.7.1991 by the Ministry of Labour, Government of India, for adjudication of the following issue:

> "Whether the demand of Engineering Mazdoor Sangh, Vadodara that the employees employed in the ONGC, Western Region, Vadodara, who have completed 240 days or more in the Commission as casual/contingent/temporary be regularised as permanent workmen from the date of their engagement in ONGC, with other consequential benefits, is justified ? If yes, to what reliefs the said workmen are entitled ?"

2.1 It was the case of the Union before the Tribunal that the ONGC was recruiting casual/contingent/ temporary workmen on a large scale in their "field parties" during the field season and when the work was reduced during the off-season, while many workmen were discharged, some were continued in service but were required to change their names under threats, not to allow them 240 days of work as "casual/contingent/ temporary" workmen and that they were required to be regularised. The case of the ONGC before the Tribunal was that, for the purpose of carrying out seismic survey and other prospecting operations and for carrying out geological and geophysical surveys for the exploration of petroleum, 13 field parties worked in the western region of the Commission. Such field parties normally worked during winter and summer approximately for nine months and they closed their work during monsoon. Each field party needed about 150-200 "casual/contingent/temporary" workmen during the field season which the chief of the party was authorised to recruit for a specified period only and such casual workmen had no right to regular posts.

2.2 According to the ONGC, there were relevant rules in the form of "ONGC (Recruitment and Promotion)

Regulations, 1980 for making regular appointments and there are Certified Standing Orders which govern the service conditions of the workmen. All the vacancies to the regular posts were required to be notified to the Employment Exchange under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. The chiefs of the field parties made recruitments without regard to the requirements of age and educational qualifications and, therefore, if such workmen were to be considered for regular recruitment, the aforesaid Rules may be violated. It was also contended before the Tribunal that if such workmen who had completed 240 days of work as casual/contingent/ temporary workmen were to be made permanent as a matter of course, that would violate Articles 14 and 16 of the Constitution. The contract of employment of such workmen came to an end when the term for which they were appointed expired and

they could not claim even the benefit of Section 25-F of the Industrial Disputes Act, 1947 ("the Act" for short). Since such workmen were paid the minimum wages as provided under the Minimum Wages Act and also 25% extra, there was no exploitation, according to the appellant.

2.3 During the pendency of the proceeding before the Tribunal, the Union had, on 28.4.1993, filed a complaint under Section 33-A of the Act to voice the grievance that the ONGC had started giving work to contractors in preference to employing "casual/ contingent/temporary" workmen and, by order dated 30.10.1993 in the said Complaint (ITC) 5 of 1993, it was held that it was not permissible for the Tribunal to examine whether the work of the ONGC was seasonal or not. And the ONGC was directed to follow the principle of "Last come first go" in case it wanted to terminate the service of such workmen on the ground that they had no work as also to obtain prior permission of the Tribunal under Section 33 (1) (a) of the Act. Then the ONGC made an application seeking permission to terminate the services of 2217 such "casual/contingent/temporary" workmen. By order dated 30.5.1994, the Tribunal permitted termination of the services of such workmen except 189 of them and the ONGC was given an option to examine the witnesses to show that actually there was no work for those 189 workmen. When evidence was recorded in the said Complaint (ITC) 5 of 1993, the ONGC did not lead any oral evidence. Nor was

any oral evidence led by either party in the main reference itself, but it appears that the parties relied upon the evidence led in Complaint (ITC) 5 of 1993 which complaint was filed in the main reference.

2.4 On the basis of earlier finding in Complaint (ITC) 5 of 1993, it was recorded in the award that:

> ".....It was a fact admitted by both the sides that the work of the ONGC is seasonal. Thus, the ONGC recruiting casual workmen in the beginning of November every year and terminating their services in April or May every year is a recurring phenomenon. But keeping workmen casual, badli or temporary over long spells of time amounts to an unfair labour practice. Therefore, there has to be some scheme of regularising such workmen. An answer is to be found in the Certified Standing Orders which govern the parties....."

2.5 As for the factual controversy regarding the workmen concerned, i.e. those excepted 189 workmen who were not permitted to be discharged, the Tribunal relied upon the list annexed as schedule to the affidavit of Shri Gautam Sen, Chief Geophysicist, Exh.48, for the number of days worked by each workman concerned. Discarding the list of 269 workmen produced by the Union along with Exh.14, the Tribunal proceeded on the assumption that the workmen shown in the schedule to Exh.48, except the last ten workmen, had completed 240 days of service in the Commission. The ONGC had shown in that schedule the number of days put in by each workman in the years 1989-90, 1990-91, 1991-92 and 1992-93. The ONGC had shown the number of days put in by each workman during the span of about eight years from 1981 to 1989 and the maximum number of days put in by the workmen for this span of time was 869 days. Thus, though at the beginning of every field season, the ONGC recruited about 2000-2500 workmen as "casual workmen" and terminated their services in April or May every year, according to the Tribunal's reading of the schedule to Exh.48, not a single workman could complete 240 days in consecutive 12 months over a span of about 12 years. That anomaly and the root cause of simmering discontent was not explained by the ONGC by leading any evidence, but the evidence produced by the Union and lack of cross-examination on the critical issue led the Tribunal to arrive at the finding of fact that officers of the ONGC had resorted to unfair labour practice of requiring the casual workmen to often change their names with a view to depriving them of their right to become temporary and in course of time to be eligible to be considered for becoming regular employees.

2.6 Accordingly, even though some of the workmen had completed 180 days in 12 consecutive months and some of them had not, relying on Clause 2 (ii) of the Certified Standing Orders, it was held that all the workmen enumerated in the schedule to the affidavit at Exh.48 (except 10 at the bottom of the list) should be treated as "temporary" in view of the sharp practice practised on them by the ONGC. In view of this finding of fact as also the fact that the workmen were "at the doors of the ONGC now for more than 12 years" and it was "palpable injustice to them", the ONGC was directed to consider, as and when vacancies to the regular posts arose, the names of those workmen in the same descending order in which they were mentioned in the schedule and to regularise them provided they had the prescribed educational qualifications and for each 240 days of work put in by each workman, the ONGC was ordered to give him age relaxation of one year. It was clarified that the workmen concerned shall have to compete with other workmen seeking employment through Employment Exchange or in similar lawful manner. The ONGC was warned to ensure that no officer in their employment resorted to unfair labour practice of inducing any casual workman to change his name and the workmen concerned were ordered not to change their own names to conceal previous employment with the ONGC. Thus, the award dated 6.6.1994 sought to resolve the industrial dispute with the above directions and awarded Rs.5000/= to the Union by way of costs.

3. It was not the ONGC which challenged the above award or the findings of fact recorded therein, but it was the Union who approached the High Court under Articles 226 and 227 of the Constitution with the grievance that the Tribunal had not directed the ONGC to regularise the service of the concerned workmen in a time-frame and had not granted the relief of consequential benefits after completion of 240 days of service. The learned Single Judge of this Court, in the impugned judgment, took the view that there was no question of limiting the scope of the reference to the names included in the schedule and once a workman had acquired the status of a temporary workman on completion of 180 days of attendance in any period of 12 consecutive months, he became entitled to be considered for conversion as a regular employee after putting in 240 days of attendance in any period of 12 consecutive months, according to the Standing Orders of the ONGC. It was observed that, for regular appointment, it was not necessary that there must be a permanent post; that regular appointment was possible against a temporary post

also; that there was no impediment against the employees who had been continuing for a number of years, in certain cases for 12 years or more, in considering them at par with the regular employees; that the Standing Orders permitted such conversion and treatment at par with regular employees; that completion of 240 days as provided in the Standing Orders and the possession of minimum qualification with reference to the post against which the employee concerned has been discharging his duties would be sufficient and the benefit of treating such employees at par with regular employees could not be avoided on the basis that they have to wait till availability of permanent post. The learned Single Judge observed that there was no question of giving regular appointment as such, but the question was to give effect to the terms of the Standing Orders according to which the status of regular appointee was to be considered by way of conversion of a temporary employee into a regular employee when he completed 240 days or more of service continuously in one year and fulfilled the requirement of minimum qualification. The following observations in the impugned judgment need to be quoted:

> "13. True it is, that the regularisation as permanent workman cannot be given in absence of availability of a permanent post as the law is settled that permanent appointment cannot be given in absence of the permanent post, but it is equally settled that the availability of a permanent post is a fortuitous circumstance and consequential confirmation of any employee is a known inglorious uncertainty in the service career and therefore, the regularisation as permanent workman may depend upon the availability of a permanent post. However, it is also trite law that regular appointment can be given even against a temporary post and therefore, there is no ban against treating a person to be regular even if the permanent post is not available. In view of this position of law, I am inclined to hold that regularisation as a permanent employee cannot be given unless there is a permanent post, but at the same time, an employee who has been working for years together can certainly be considered at par with other regular employees for the purpose of all other benefits and so far as the Standing Order 2 (ii) to which the reference is made hereinabove is concerned, it is very clear that it speaks of consideration for conversion as regular employee. The consideration for conversion as regular

> employee cannot be compared with regularisation as permanent workman and for the purpose of conversion of workman as regular employee, what is to be seen is the completion of 240 days and the minimum qualifications prescribed by the Commission. It is, therefore, not a case of giving a regular appointment but a case of conversion as regular employee as contemplated by the Standing Orders........"

> "....It is, therefore, transparently clear that if a workman had completed 180 days in 12 consecutive months, he ceases to be a casual employee and becomes a temporary employee and if such temporary employee completes 240 days in 12 consecutive months and he also becomes eligible to be converted as regular employee and the ONGC was not willing to confer this status to temporary workman or the entitlement for consideration as regular employee by conversion and therefore the employees had to seek employment in different names after completing 180 days......"

3.1 Out of the reliefs granted on the above basis, only the direction to treat the temporary employees at par with the regular employees and to relax the age requirement is left to be considered as the subject-matter of this appeal. The objection and insistence of the ONGC, in effect, is that the workmen concerned, by now only 153 in number (some having been already absorbed and some having left for their heavenly abode) should be allowed to be continued as seasonal and casual employees away from the security of job, pay-scales and perquisites available to the regular employees of the ONGC mainly on the grounds that they are not regularly recruited employees against permanent posts and their work in the field parties continues to be seasonal, and in view of the prospect of shrinking requirement of permanent staff in the changing environment of free-market economy, de-nationalization and globalization.

4. Before dealing in detail with the grounds and contentions of the appellant, it would be pertinent to advert to certain developments which took place during the pendency of the proceedings. Even before the industrial dispute was raised and referred, three groups of total 269 workmen of the ONGC had filed three petitions in the High Court being SCA No.1378, 3190 and 4165 of 1990 wherein direction to raise an industrial

dispute was issued. Upon raising the industrial dispute and failure report of the Conciliation Officer being submitted in March 1991, the industrial dispute was referred by the Central Government in July 1991. During the pendency of the reference, an ex-parte order directing the ONGC to maintain status quo till further orders was passed on 2.4.1992 and that order being not vacated, the ONGC had challenged that order by SCA No.3152 of 1992 which petition was rejected by this Court on 6.5.1992. The ONGC had, therefore, preferred S.L.P. (Civil) No.8383 of 1992 wherein an interim stay against the order dated 6.5.1992 was granted. While disposing that appeal on 16.10.1992, the Supreme Court had recorded the statement of the learned senior advocate appearing for the ONGC that all the employees involved in the reference would be given employment with effect from 1.11.1992 in connection with the field party work. The aforesaid order of the High Court was, therefore, vacated and the Industrial Tribunal was directed to dispose of the reference as expeditiously as possible and preferably within four months.

4.1 On 28.4.1993, when the Union filed Complaint (ITC) No.5 of 1993 under Section 33-A of the Act, the Tribunal made an order on 30.10.1993 directing the ONGC to prepare seniority list of temporary workmen who had worked for more than 240 days and to observe the principle of "Last come first go" if retrenchment was to be made, as also to take prior permission of the Tribunal before retrenching such workmen. On 30.5.1994, the Tribunal permitted termination of services of other "casual/contingent/temporary" workmen excepting the batch of 189 workmen who were at that time in employment of the ONGC and declared that the case of those 189 workmen was liable to be reviewed if the ONGC offered evidence on the question as to whether work existed for them or not. Such evidence does not appear to have ever been led by the ONGC. Therefore, those workmen were required to be continued in service without any break.

4.2 After the aforesaid order dated 30.5.1994 becoming final upon rejection of the petition preferred therefrom, the ONGC made an application in the Tribunal praying that it was not permissible for the Tribunal to proceed with the enquiry contemplated in the earlier orders and no further proceedings were required to be done. Upon that application being rejected, the ONGC preferred a writ petition being SCA No.10460 of 1994 which was allowed and by order dated 16.9.1994, the orders dated 8.8.1994 and 9.8.1994 directing payment of wages for the months of June, July and August, 1994

passed by the Industrial Tribunal in Application (ITC) 1 of 1994 in Complaint (ITC) 5 of 1993 were quashed.

4.3 Thus, in short, during the pendency of the reference before the Tribunal, the injunction against termination of services of the workmen concerned continued and enquiry as to whether the work existed for the workmen came to be closed at the instance of the ONGC. And the ONGC continued to employ the workmen on seasonal and casual basis.

4.4 During pendency of SCA No.12850 of 1994 in which the judgment under appeal was rendered, it was alleged by the Union that the ONGC had stopped marking presence of the workmen concerned from 1.6.1994 and not paid wages for the period from 1.6.1994 to 16.10.1994. In reply to that the ONGC stated on affidavit that, "there was no work to be offered to the said people and that, therefore, there was no question of marking their presence or making payment of wages from 1.6.1994 to 16.10.1994". While admitting the petition on 30.11.1994, the Court found that no interim order was necessary but liberty was given to the parties for moving for early hearing and the Court declared that any step to be taken by the respondent affecting interests of the petitioner would be subject to the result of the petition. In the four years of pendency of the petition, it appears to have been contested mainly on factual grounds and the legal objection that, it having been preferred from and after an adjudication, it essentially invoked Article 227 of the Constitution under which the powers of the Court were severely restricted. It is not clear as to which conditions of service prevailed during the period of pendency of the petition.

5. During the pendency of this appeal, by order dated 28.1.2000, the order passed by the learned Single Judge was stayed except for 156 workmen whose names appeared in the list at page 523-526 of the L.P.A. and those 156 persons were directed to be employed prospectively in the field work known as "field party". The petition for Special Leave to Appeal (Civil) No.6753 of 2000 preferred from the said order was withdrawn on 16.10.2000. Upon the ONGC seeking clarification of the aforesaid order dated 28.1.2000, it was conceded on behalf of the workmen that the workmen concerned were to be employed as "seasonal workers" as they were being employed and it was clarified that the benefits to be

granted to the workmen under the impugned judgment were to be granted prospectively. Upon that order being

carried in appeal to the Supreme Court, it was observed as under by the Hon'ble Supreme Court in its order dated 16.2.2001:

> ".....It is unnecessary to further clarify the order here. The benefits given to field workers which are granted by the learned Single Judge should be made available to those 156 persons pending disposal of the appeal. The appeal is accordingly disposed of."

> "We observe that having regard to the controversy involved in this appeal, it would be appropriate for the High court to dispose of the appeal as expeditiously as possible, preferably within three months from today. No costs."
> (emphasis added)

6. Thereafter, several civil applications and miscellaneous civil applications have been filed in this Court, pending appeal, voicing mainly the grievance of the Union that the workmen were not granted the benefits which were ordered to be granted by the learned Single Judge despite the above injunction and direction of the Supreme Court. This Court, therefore, vide order dated 5.11.2004, directed the ONGC to grant "all the remaining benefits permissible under its Rules, Regulations, Settlements or Schemes to the workmen concerned in this application at par with the regular employees except only those which can legitimately be denied to the regular employees on account of their not working throughout the year or on account of not fulfilling necessary conditions for grant of such benefits." The arrears and the dues on

account of such additional benefits were ordered to be paid to the workmen concerned by 1.12.2004 with the observation that any violation of the order dated 16.2.2001 of the Hon'ble Supreme Court could be treated as contempt of the Court.

6.1 The above order having been carried in appeal by the ONGC, the Supreme Court ordered on 1.12.2004 as under:

> "In view of the fact that the matter has been fixed for hearing on 16.12.2004 before the High Court and in view of the fact that learned counsel appearing on behalf of the respondent states that his client will not press for

implementation of the order of the Division Bench impugned before us, no ad-interim order is passed.

It is expected that the High Court, having fixed 16.12.2004 as the date of hearing, will hear and dispose of the matter as expeditiously as possible and will not further adjourn the matter."

6.2 Thereafter, during the course of hearing of this appeal, learned Solicitor General appearing for the ONGC, stated that the ONGC would endeavour to give its "without prejudice" proposal to the respondent Union and to explore the possibility of an amicable settlement as suggested by the Court in view of the Union giving up its claim against modification of the direction No.1 in paragraph 15 of the impugned judgment and the ONGC having decided not to press challenge to the direction No.3 thereof. Thereafter, the ONGC sought time for finalizing their proposal till the learned counsel for the Union objected on the ground that the ONGC was seeking to give a proposal which was a mere eye-wash, while, on the other hand, the Union representatives were called to accept termination of services of the workmen concerned and their fresh engagement on contract basis, after more than 20 years of their services.

7. The important points which stand out from the above narration of facts and the record and proceedings of the case may be summarised as under:

(a) The industrial dispute and the direction under challenge are now restricted to regularisation of 156 workmen, out of whom 3 have expired and to whom 5 may have to be added as having been left out by mistake; thus bringing the figure of the workmen concerned to 158 employees. Their dates of initial entry into service fall in the years 1981 to 1989 and such dates as well as the nature of duties that they have been discharging are easily ascertainable by the ONGC. To quote the unchallenged observations as under in the impugned judgment may be apposite:

"It has been pointed out that such employees have been working as clerks, typists, stenographers, drivers, peons and other posts in Class III and Class IV

and they do fulfil the qualifications which are prescribed for each of such posts in terms of the Regulations of 1980."

(b) The ONGC has not, even during the pendency of the petition of the Union, challenged the findings of fact recorded by the Tribunal to the effect that the workmen concerned had completed 240 days of service under the ONGC though not in consecutive 12 months and that officers of the ONGC had resorted to unfair labour practice of requiring the casual workmen to change their names often with a view to depriving them of their right to become temporary employees and in course of time to be eligible to be considered for becoming regular employees. The Union has, however, challenged the finding regarding the workmen not completing 240 days in consecutive 12 months and pointed to the uncontradicted evidence of the workmen stating that the workmen concerned were working throughout the year, even during off-season period, though at different places in different capacity or in different name.

(c) It would appear from the evidence on record and paragraph 6 of the written statement of the ONGC itself that the field parties in which the workmen concerned were employed worked normally during winter and monsoon approximately for nine months. That each of the field parties needed to engage 150-200 persons for rendering assistance in its work of seismic survey and geological and geophysical surveys for exploration of petroleum.

(d) By virtue of or despite the prohibitory orders against termination, the workmen concerned appear to have been employed for not more than 8-9 months in a year since raising of industrial dispute in the year 1991. By now, by virtue of the impugned judgment and interim orders, the workmen concerned are already allowed, since January 2000, wages and some benefits at par with the regular employees excepting the perquisites and allowances which the regular employees are allowed on account of their working throughout the year.

(e) During the marathon legal proceedings running for 25 years, almost every single order, interim or final, has been carried in appeal, mostly by the

ONGC. As it is obvious and as submitted on behalf of the Union, the litigation has cast an impossible burden upon the workmen which inspired them to accept a settlement if the ONGC offered a reasonable scheme of regularisation. In the alternative, they insisted upon full regularisation with all the consequential benefits with effect from the date of the award which also would be, on an average, after ten years of regular service on casual or temporary basis.

(f) The ONGC has dithered and not fully complied with the direction to treat the workmen at par with the regular employees despite clear orders and clarifications by this Court and the Supreme Court during the pendency for five years of this appeal.

8. The original award of the Tribunal as also the impugned judgment have relied upon the Standing Orders of the ONGC for the grant of relief. Those "CERTIFIED STANDING ORDERS FOR CONTINGENT EMPLOYEES OF THE OIL AND NATURAL GAS COMMISSION" in force since 15.7.1962 applied to all workmen called "contingent employees" employed in various units of the ONGC excluding the regular employees to whom other statutory rules applied. Relevant Clause 2 of those Standing Orders reads as under:

"2. (i) Classification of workmen:
The contingent employees of the Commission shall hereafter be classified as:

(a) temporary.
(b) casual.

(ii) A workmen who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses minimum qualifications prescribed by the Commission may be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor

regular shall be considered as "casual workman".

The Standing Orders also provide for other conditions of service including termination of service. Clause 14 provides for termination of employment by notice in writing in accordance with the provisions of the Industrial Disputes Act and, where the workman is not entitled to one month's notice under the I.D.Act, for at least seven days notice or payment of wages in lieu thereof. The Standing Orders also contain provisions for attendance and late coming, leave and holidays, absence, stoppage of work, misconduct and disciplinary action, complaints etc.

8.1 As for regular employees, the ONGC had made "The Oil & Natural Gas Commission (Recruitment and Promotion) Regulations, 1980" in exercise of the powers conferred by Section 32 of the Oil & Natural Gas Commission Act, 1959. Those regulations provided for the method of filling posts, categories of posts, scales of pay, qualifications and other matters connected therewith, age limit for direct recruitment and other matters to be followed while making recruitments and promotions, method for filling of vacancies by direct recruitment and promotions etc. Relevant for the present purpose is Regulation No.3 which reads as under:

"3. Method of filling posts:

All posts in the Commission would be filled up by:

(a) direct recruitment, or

(b) promotion of employees already in service of the Commission, or

(c) borrowing the services of the persons from the Central Government or the State Governments, or public sector undertakings, or local or other authorities, or

(d) any other method as may be decided by the Commission at a meeting for reasons to be recorded in writing for appointment to any post or persons possessing special merit,

qualifications or experience."

Schedule II to the above regulations provided for "age limit for direct recruitment" and other conditions to be followed while making direct recruitment and promotions to various posts and Clause 9 provided as under:

"9. The Commission shall be competent to relax the requirement of educational qualifications and experience in respect of the existing employees in the service of the Commission on the date of commencement of these regulations wherever such requirements are higher than those existing prior to the date of such commencement."

8.2 The Office Order dated 25.4.1980 of the ONGC on the subject of "fitment of existing employees" and other matters connected therewith consequent upon introduction of the Recruitment and Promotion Regulations, 1980 stipulated in paragraph 1 (iv) that in case of vacancies to be filled in by direct recruitment, departmental candidates fulfilling the requisite qualifications will be given first consideration.

8.3 The phrase "existing employees" was, however, defined to mean an employee who was holding permanent or temporary appointment in the Commission on the date the regulations came into force and did not include the persons appointed on casual, contingent or ad-hoc basis.

8.4 A conjoint reading of the above relevant statutory provisions shows that the ONGC had practically two separate establishments and set of rules as far as the employees were concerned and the only window for becoming a regular employee from a casual or temporary employee was provided by Standing Order No.2 (ii) and Regulation No.3 (d) quoted hereinabove. It is not the case of the ONGC that no casual or temporary employee was ever considered for inclusion as regular employee; nor that the workmen concerned did not possess the minimum qualifications prescribed by the Commission. Viewed in that perspective, it would clearly appear that the industrial dispute arose on account of failure of the ONGC in exercising the discretion vested in it to consider the cases of temporary workmen who had put in not less than 240 days of attendance in a period of 12 consecutive months and the industrial adjudicator was called upon to consider and decide the cases of the

workmen for whom regularisation was due. When the award dated 6.6.1994 only directed the ONGC to "consider and regularise the workmen" subject to the condition of vacancies to the regular posts and competition with other workmen seeking employment through Employment Exchange,

the relief became pyrrhic and the impugned judgment sought to grant some real relief in the sense that the said two conditions were removed and a direction to treat the workmen concerned at par with other regular employees was issued.

8.5 It must be noted here that during the entire course of the prolonged proceedings, the ONGC did not take the opportunity of leading any evidence to show that the services of the workmen concerned were not required at all or that their regularisation would cast an unbearable financial burden or that at any point of time they were discharged from service in accordance with law. Nor did the ONGC even seek to establish anywhere that the "field parties" with which the workmen were attached worked only intermittently. Instead, the evidence of the workmen to the effect that the workmen were employed throughout the year was not contradicted except by showing the number of days on which they had worked during the period from 1981 to 1993.

8.6 It would be advantageous to note in the above context the relevant provisions of the Industrial Disputes Act under which upon completion of continuous service of 240 days in a year, independent of any service rules, regulations or standing orders, the workman acquires certain rights and the employer incurs several obligations. There are prohibitive provisions in Sections 25-F, 25-G, 25-H, 25-M, 25-N and penal provisions under Section 25-Q in respect of retrenchment and lay-off in the I.D.Act. Section 25-T of the I.D.Act proscribes, under pain of penalty under Section 25-U, employment of workmen as casuals or temporaries and continuing them as such for years with the object of depriving them of the status and privileges of permanent workmen. Thus, in short, what the industrial adjudicator was called upon to do was not balancing the rival interests but he had to order what the ONGC was otherwise also required to do and prohibited from not doing, i.e. consideration of the cases of temporary employees of the contingent establishment for their conversion into regular employees which was permissible and envisaged by its service regulations, only subject to the workmen concerned fulfilling the requirements of qualifications and age.

9. The grounds (a) to (z) of this appeal attacks the impugned judgment as a whole in view of the reliefs granted. But, upon the appeal being restricted to direction No.2 in paragraph 15 of the impugned judgment, the appellant concentrated on the submission that the learned Single Judge had erred in issuing that direction. It was argued that the question of regularisation and treatment at par with other regular employees could arise only after actual absorption of the workmen concerned on the permanent set-up of the ONGC. That, when the posts or vacancies were not available, the direction for regularisation was neither justified nor sustainable. That there was no reason to vary the scheme and direction of the Tribunal in absence of any evidence that there were vacancies. That the impugned direction was inconsistent with the Standing Orders insofar as the discretion vested in the Corporation was exercised by the Court, disregarding the requirements for permanent employment, fulfillment of minimum qualifications and completion of minimum 240 days of attendance in a year. It was also contended that the Recruitment and Promotion Regulations of 1980 were revised in 1996 and, therefore, the workmen concerned could not be ordered to be regularised even if they fulfilled the requirement of qualifications under the old rules since the regulations applicable would be the regulations in force at the time of consideration of the field workers for permanent appointment. It was also contended that the workmen concerned had failed to prove that each of the workmen had put in 240 days of work in 12 consecutive months. In fact no evidence was led in the main reference before the Tribunal and only the evidence led in the complaint (ITC) No.5 of 1993 was relied upon. It was submitted that the field workers were engaged only for the period of field season and since such work was reduced to only seven months in a year, the principle of "no work no pay" applied.

10. Learned senior counsel Mr.M.J.Thakore with learned counsel Mr.K.M.Thaker appearing for ONGC relied upon the judgment of the Supreme Court in STATE OF U.P. v. AJAY KUMAR [(1997) 4 SCC 88] to submit that there has to be a post in existence and administrative instructions or statutory rules to appoint a person on such post. Appointments on daily wage basis on contingent establishment in which there cannot exist any post cannot be regularised and a direction in such circumstance to regularise service of the respondent to the post as and when vacancy arises and to continue him till then was held to be illegal. Another judgment of the Supreme

Court in DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION v. DELHI ADMINISTRATION [(1992) 4 SCC 99] relied upon for the appellant, however, denied full employment and equal pay for equal work in the context of Jawahar Rozgar Yojna, a scheme with limited resources for providing employment. NOTIFIED AREA COUNSIL v. BISHN C. BHOI [(2001) 10 SCC 636] was relied upon to submit that when the entire selection process and the appointments were irregular and illegal, sympathies would be misplaced when there was even absence of any sanctioned post. MAHENDRA L. JAIN v. INDORE DEVELOPMENT AUTHORITY [(2005) 1 SCC 639] was relied upon to submit that what can be regularised is an irregularity and not an illegality. The constitutional scheme does not contemplate any back-door appointment. A daily-wager in the absence of a statutory provision in that behalf would not be entitled to regularisation. SUBEDAR SINGH v. DISTT. JUDGE, MIRZAPUR [(2001) 1 SCC 37] was relied upon to submit that when the appointment to a post was governed by a set of statutory rules, it was unthinkable that someone should be appointed by manoeuvering. No rule, law or regulation, nor even any administrative order was shown in that case on the basis of which the employee could claim a right to regularisation. ASHWANI KUMAR v. STATE OF BIHAR [(1997) 2 SCC 1 was relied upon for the proposition that if the initial entry into service was unauthorised and is not against any sanctioned vacancy, the question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility.

10.1 Relying upon the judgment of the Supreme Court in J&K PUBLIC SERVICE COMMISSION AND ORS. v. DR. NARINDER MOHAN AND OTHERS [(1994) 2 SCC 630], it was submitted that where recruitment rules prescribed direct recruitment and promotion as the modes of recruitment, a hybrid procedure not contemplated by the recruitment rules and dispensing with open competition would amount to directing disobedience of the Constitution and law. BASHIR AHMED AND OTHERS v. STATE OF PUNJAB AND OTHERS [(1996) 8 SCC 697] was relied upon to submit that only those who possessed the necessary qualifications can be considered for regular recruitment. UNION OF INDIA v. MAHENDER SINGH AND OTHERS [(1997) 1 SCC 245] was relied upon to submit that merely on the basis of long period of service, the claim of regularisation based on relaxation of age-limit and educational qualifications could not be sustained. M.D., U.P.LAND DEVELOPMENT CORPORATION AND ANOTHER v. AMAR SINGH AND OTHERS [(2003) 5 SC 388] was

relied upon to submit that when the employees were working under a scheme or under a project, they were not entitled to claim regularisation and once the project comes to an end, service of the employee also comes to an end.

10.2 In order to assail the grant of parity of wages and treatment at par with the regular employees, it was submitted that there was no evidence to suggest equality of work, qualifications and responsibilities and hence the principle of "equal pay for equal work" did not apply. The judgment of the Supreme Court in STATE OF HARYANA v. TILAK RAJ AND OTHERS [AIR 2003 SC 2658] was relied upon to submit that a scale of pay is attached to a definite post and a daily-wager does not hold a post. To claim a relief on the basis of equality, it was for the claimant to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scale. The problem about equal pay cannot always be translated into a mathematical formula. As held by the Supreme Court in UNION OF INDIA AND OTHERS v. PRADIP KUMAR DEY [(2000) 8 SCC 580], there must be sufficient comparative material before the Court for comparison. In the facts of that case, there was no material before the Court for comparison in order to apply the principle of "equal pay for equal work" between the radio operators of CRPF and those working in the Central Water Commission and the Directorate of Police Wireless and the factual statements contained in the recommendations of a particular department were held to be neither proof per se nor conferring any right to make a claim for writ of mandamus. In STATE BANK OF INDIA AND ANOTHER v. M.R.GANESH BABU AND OTHERS [(2002) 4 SCC 556], a three Judge Bench of the Supreme Court has held that equal pay must depend upon the nature of work done and cannot be judged by the mere volume of work since there may be qualitative difference as regards reliability and responsibility. Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination, as the case may be. In UTKAL UNIVERSITY AND ANOTHER V. JYOTIRMAYEE NAYAK AND OTHERS [(2003) 4 SCC 760] where the High Court had rejected the claim for regularisation but directed payment of salary at par with similarly placed employees in the University, the

direction was set aside by the Supreme Court on the ground that the employees did not have any appointment order on the basis of which they could claim pay scale or regular salary. In the facts of that case, services of the employees concerned were already terminated. In ORISSA UNIVERSITY OF AGRICULTURE & TECHNOLOGY AND ANOTHER v. MANOJ K. MOHANTY [(2003) 5 SCC 188], the High Court had not kept in mind the implications and impact on the other employees working in the University and no details or material was placed before the High Court for comparison in order to apply the principle of "equal pay for equal work". Therefore, in absence of necessary averments and materials, the High Court was held to have erred in directing payment of regular pay scale without examining the relevant factors. A recent judgment of the Supreme Court in MAHENDRA L. JAIN v. INDORE DEVELOPMENT AUTHORITY AND OTHERS [(2005) 1 SCC 639] was also relied upon for the proposition that regularisation cannot be claimed as a matter of right and an illegal appointment cannot be regularised by taking recourse to regularisation. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation.

11. As against the above arguments and contentions of the appellant, learned senior counsel Mr.Girish Patel with learned counsel Mr.S.N.Mehta appearing for the respondent submitted that the main contention of the appellant before the learned Single Judge was that the powers of the High Court under Article 227 of the Constitution were severely restricted and did not permit modification of the award of the Industrial Tribunal. Now that the petition of the present respondent was allowed and due and detailed directions to do complete justice were issued by the High Court, a Letters Patent Appeal was not maintainable. It was also submitted that in absence of any evidence led by the appellant before the Tribunal, the Tribunal as well as the High Court was justified in relying upon the material on record in the form of rival pleadings, oral depositions of four workmen in the complaint made in the main reference and in granting the appropriate reliefs. He submitted that while broadly each of the workmen concerned had completed more than 15 years of service as temporary or casual "contingent employee" and has been employed on "seasonal basis" despite the interim orders prohibiting their termination, it was in the interest of justice and industrial peace that the workmen were regularised and treated at par with the regular employees of the ONGC. It was pointed out that even as the ONGC, a statutory Corporation, was converted into a limited company by the

time the award was made, its core function remained geological and geophysical surveys for exploration of petroleum and carrying out drilling and other prospecting operations. It was in that work that the workmen concerned were mainly and consistently employed. Although contingent employees were employed in large numbers during field season, the workmen concerned were employed throughout the year as a part of the core team manned by regular employees and officers. The ONGC reduced their employment to the field seasons after raising of the industrial dispute in order to continue them as casual or temporary employees and deny them the benefits due to the regular employees. The finding of fact that the ONGC had indulged in unfair labour practice has remained unchallenged and the workmen have admittedly continued in service as a second class work-force resulting into obvious injustice and discrimination. It was, therefore, incumbent upon the industrial adjudicator to grant real and substantial reliefs which, ultimately, the High Court had rightly granted, according to the submission.

11.1 The learned counsel relied upon the landmark three-Judge Bench judgment of the Supreme Court in STATE OF HARYANA AND OTHERS v. PIARA SINGH AND OTHERS [AIR 1992 SC 2130] wherein it is laid down that the main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that a person should not be kept in a temporary or ad-hoc status for long. Where a temporary or ad-hoc appointment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation. There can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. It is held that a direction to regularise a back-door entrant would only result in encouragement to such unhealthy practice. There was nothing wrong in prescribing a particular date by which the specific period of service ought to have been put in. The order prescribing that only those employees who had been sponsored by an employment

exchange could alone be regularised was held to be reasonable and wholesome requirement designed to curb entry of back-door employees and irregular appointments. Saying a few words concerning the issue of regularisation of ad-hoc/temporary employees in Government service, the Supreme Court has observed as under:

> ".....Efforts should always be to replace such an ad-hoc/temporary employee by a regularly selected employee as early as possible; temporary employees should not be replaced by another ad-hoc or temporary employee; even where an ad-hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay; if for any reason an ad-hoc/temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. .....So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. .....Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein. .....These directions shall not, however, apply to the Statutory/Public Corporations functioning within the States as are under the control of the Government of India. These Corporations will do well to evolve an appropriate policy of regularisation, in the light of this judgment, if they have not already evolved one, or make their existing policy consistent with this judgment to

avoid litigation."

(emphasis supplied)

11.2 Relying upon the above judgment in PIARA SINGH (supra), the Supreme Court ordered in STATE OF HARYANA v. SURINDER KUMAR AND OTHERS [(1997) 3 SCC 633] that the cases of the employees who were appointed as daily wagers on contract basis to the post of clerk should be considered in accordance with law provided they were otherwise eligible and, if they had become age barred, age may be relaxed for the period they had worked and that on regular appointment they would be entitled to equal pay at par with the regular clerks.

11.3 In FOOD CORPORATION OF INDIA WORKERS' UNION v. FOOD CORPORATION OF INDIA AND ANOTHER [(1996) 9 SCC 439], in the factual backdrop of failure of the employer to produce any evidence in the context of employment of the workmen concerned, the Supreme Court examined two illustrative cases and reversed the finding that none of the 287 persons were able to establish that they were employees of the depot concerned of the F.C.I. at the relevant time. It was held that the Tribunal was not a Court and there should be only "material" and not "evidence" as required by the Evidence Act. It was also held that although the F.C.I. mentioned certain difficulties in conclusively determining the identity of the persons as per the orders of the Supreme Court, the long lapse of time cannot be ignored and the Supreme Court cannot shirk its responsibility in resolving the issue on the basis of available material, however difficult or arduous it may be. After all, it is a "human problem" that calls for an urgent decision.

11.4 In DAILY RATED CASUAL LABOUR employed under P&T DEPARTMENT v. UNION OF INDIA AND OTHERS [(1988) 1 SCC 122], the Supreme Court directed payment of wages at the rates equivalent to the minimum pay in the pay scales of regularly employed workers to the casual labourers belonging to the several categories and observed that unless a sense of belonging to the organisation engaged in production arises in a workman, he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment at the whim of the management. It is for that reason that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. The

employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Our wage structure is such that a worker is always paid less than what he produces, and if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. It is against this background that non-regularisation of temporary employees or casual labour for a long period can be said to be not a wise policy. The employer was, therefore, directed to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who had been continuously working for more than one year.

11.5 In DELHI MUNICIPAL KARMACHARI EKTA UNION v. P.L.SINGH AND OTHERS [1988 (Supp) SCC 95], the Supreme Court following the above decision in DAILY RATES CASUAL LABOURERS (supra), directed the Delhi Municipal Corporation to prepare a scheme for absorbing the Vaccinators/Immunisors employed on daily wages basis for more than eight years and order was made in substitution of the award passed by the Tribunal.

11.6 In UNION OF INDIA v. DHARMA PAL AND OTHERS [(1996) 4 SCC 195], in absence of any existing rules for regularisation, the scheme devised pursuant to the direction of the Court was approved and the employer was directed to regularise all the workmen who had completed the prescribed period of days, i.e. 240 days against the existing vacancies applying the rules of reservation, in order of seniority in respective categories mentioned in the scheme. Such regularised employees were held to be entitled to all the regular payment at the prescribed scale of pay and those who could not be regularised were directed to be regularised in order of seniority as and when vacancies arose. The daily-wage workers/casual workers who were not regularised and work was taken from them were held to be entitled to minimum of the scale of pay prescribed for the post in addition to 60% of the DA and retrospective effect was given to the directions.

11.7 In SURINDER SINGH AND ANOTHER v. ENGINEER-IN-CHIEF, CPWD AND OTHERS [(1986) 1 SCC 639], the Supreme Court observed as under:

> "The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as that the

> principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State undertakings. .....We also record our regret that many employees are kept in service on a temporary daily wage basis without their services being regularised. We hope that the government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months."

11.8 In U.P. INCOME TAX DEPARTMENT CONTINGENT PAID STAFF WELFARE ASSOCIATION v. UNION OF INDIA AND OTHERS [1987 (Supp) SCC 658], the Supreme Court, being not satisfied with the scheme in force and finding that many employees concerned had been working on daily-wage basis for nearly eight years or more, directed payment of wages to the workmen who were employed as the contingent paid staff of the Income Tax Department doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres, without any increments with effect from 1.12.1986. The Court further directed preparation of a scheme on a rational basis for absorbing as far as possible the contingent paid staff of the Income Tax Department who had been continuously working for more than one year as Class IV employees.

11.9 In V.M.CHANDRA v. UNION OF INDIA AND OTHERS [(1999) 4 SCC 62], considering the long period of service the appellant had put in and the qualification possessed by her as also the number of occasions she had approached the Tribunal and the authorities for relief, the Supreme Court directed her absorption as Skilled Artisan in Grade III in appropriate scale by giving increment and continuity in service on that basis. It was observed that the view taken by Chairman of Railway Board that there cannot be any designation assigned to a casual employee baffles all logic.

11.10 Recently in GUJARAT AGRICULTURAL UNIVERSITY v. RATHOD LABHU BECHAR AND OTHERS [(2001) 3 SCC 574], the Supreme Court held as under:

> "17. From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that the contesting workmen have been working in the appellant

University regularly for a long number of years. The existence of permanent nature of work was inferred on this account and also due to the vastness of the appellant's establishment. The regularisation is claimed only in respect of Class IV employees. The main objection which was raised earlier and is raised before us, is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualifications, if any, prescribed. In fact, the Tribunal has held that on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from the daily-wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from a daily-wage worker or an ad-hoc appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with a sword of Damocles hanging over their heads or to continue with favoured ones in the cases of ad-hoc employees withstalling competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, why they continue to work for year after year, the only option to the employer is to regularise them. Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is

cast to assess the quantum of such work and create such equivalent posts for their absorption."

(emphasis added)

The Supreme Court further observed that:

"19. ....The Court does exercise its restrain where facts are such where extent of creation of post create financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily-wage workers for a long number of years without absorbing them or creating posts, which constitutes an unfair labour practice. .....If finances are short, engagement of such daily-wage workers cold only be for a short limited period and if continuous work is required it could only do so by creating permanent posts. If finances are not available, take such work which is within the financial means. Why take advantage out of it at the cost of workers ?"

11.11 In INDIAN PETROCHEMICALS CORPORATION LTD. AND ANOTHER v. SHRAMIK SENA AND OTHERS [(1999) 6 SCC 439], where initial appointments of the workmen were not in accordance with the rules governing the appointments or the established policy of recruitment of the Management and the employer was an instrumentality of the State, the services of the workmen were held to have been ordered to be regular by the Court not as a matter of right of the workmen arising under any statute, but with a view to eradicate unfair labour practices and in equity to undo social injustice and as a measure of labour welfare, subject to suitable guidelines or conditions.

12. The plethora of precedents referred to in the previous paragraphs might in the first blush appear to be disparate and bewildering; but a closer scrutiny would reveal an underlying theme and an attempt at meting out justice in the given set of facts and within the legal limitations. It could be distinctly observed that the issue of regularization has been addressed by the Courts at two different levels and each precedent emphasizes a particular aspect of the matter. The issue of regularization comes up before higher Courts either after an industrial adjudication or straight away under the constitutional scheme of rights and remedies. Besides the factual variations on account of nature of

appointment, employment, work and tenure, the legal treatment and moulding of relief also varies according to the provisions of law applicable to the establishment. However, there is a basic difference in approach when the workmen seek enforcement of constitutional guarantees and when new rights are sought to be created and conditions of services are sought to be improved through an industrial adjudication. When an industrial dispute is raised, it is a commotion to be pacified by dispensing justice. In such adjudication, not just the right to equality and other constitutional guarantees, but the aims and ideals of the Constitution enter into the consideration.

12.1 If we take an overview of the bedrock of our constitutional ideology, the Constitution is, by its very preamble, dedicated to securing to all its citizen, social and economic justice. By virtue of Article 37, the principles contained in Part IV are fundamental in the governance of the country. Dr.Ambedkar said: "...In my judgment the Directive Principles have a great value for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution without any directions as to what our economic ideal or as to what social order ought to be, we deliberately included the directive principles in our Constitution..." It is the duty of the Courts to apply the directive principles in interpreting the Constitution and the laws. Fundamental Rights should thus be interpreted in light of the Directive Principles and the latter should, whenever and wherever possible, be read into the former. As held by the Supreme Court in U.P.STATE ELECTRICITY BOARD v. HARISHANKAR JHA [AIR 1979 SC 65], addressed to Courts, the injunction that the Directive Principles are fundamental in the governance of the country, means that while the Courts are not free to direct making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of the Judges when interpreting statutes which concern themselves directly or indirectly with the matters set out in the Directive Principles.

12.2 Article 38 of the Constitution requires the State to strive to promote welfare of the people by securing and protecting, as effectively as it may, a social order in which social and economic justice may inform all the institutions of the national life and, in particular, to

minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals and groups. Article 39 requires the State to direct its policy towards securing for every citizen the right to an adequate means of livelihood and to see that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Article 41 requires the State within its limitation to make effective provisions for securing the right to work and Article 42 requires making of provisions for securing just and humane conditions of work. Article 43 requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, work, a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure.

12.3 Article 51-A makes it a fundamental duty of every citizen to abide by the Constitution and to respect its ideals, to follow the noble ideals which inspired our freedom struggle, to promote harmony, to develop humanism and to have compassion for all living creatures. These aims and ideals, coupled with a duty to follow them, are cast in the Constitution to keep them constant and above the vicissitudes of political ideology and economic policy. When an industrial adjudicator having the power to transcend contractual conditions of service entertains an industrial dispute, he exercises the judicial power of the State and endeavours to secure for the industrial workers "work, a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure", within the limitations laid down by law and binding precedents. Thus, the aim and object of adjudication of an industrial dispute is dispensing social and economic justice and translating the fundamental rights as well as the directive principles into some tangible relief. The jurisdiction of an Industrial Tribunal, therefore, is expansive and creative and not restricted to only enforcing or interpreting the contract of service or the extant legal provisions. To quote the following views of a Four Judge Bench of the Supreme Court in BOMBAY LABOUR UNION v. INTERNATIONAL FRANCHISES LTD. [(1966) 1 LLJ 417] voiced by Their Lordhips through Justice Shri K.N.Wanchoo, as early as in 1966, in the above context, may be apposite:

> "Then it is urged that the employer was free to impose any condition in the matter of employment when he employs a new workman and that industrial adjudication should not interfere with this right

> of the employer. All that need be said in this connection is that it is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and to vary them if it is found necessary, unless the employer can justify an extraordinary condition like this by reasons which carry conviction. In the present case the reasons which the respondent has advanced and which were the basis of the two decisions referred to earlier do not commend themselves to us as sufficient for such a rule. We are therefore of opinion that such a rule should be abrogated in the interest of social justice."

As held earlier by the then Federal Court of India as early as in 1949 in WESTERN INDIA AUTOMOBILE ASSOCIATION v. THE INDUSTRIAL COURT, BOMBAY [(1949) LLJ 245], industrial adjudication does not mean adjudication according to strict law of master and servant. The award of the Tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by those limitations. The Court approved the view of Ludwig Teller (in Vol.I of Labour Disputes and Collective Bargaining) that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones.

12.4 When the demand for regularisation, absorption or permanency in service is raised by workmen employed and continued as casual, temporary, seasonal, daily wager or on such other irregular basis for a fairly long spell and such dispute is referred for adjudication, the resolution thereof will firstly depend upon the legality and propriety of continuation of their services on the same basis. If such employment on irregular basis is in violation of the express provisions of the I.D. Act or if it amounts to unfair labour practice on the part of the employer, such illegality or unfair labour practice must come to an end with the adjudication. No employer can claim the privilege or facility of committing an offence or violating the express provisions of the I.D. Act on the grounds that there are no posts, vacancies, work or funds for employment of the workmen in a legal manner. Where the casual or temporary employment on daily wage basis or otherwise is not in violation of any express provisions of law, the other considerations of

availability of work, regular requirement of employees, financial impact, length of service, required qualifications, nature of the undertaking or project etc. will be attracted and the aforesaid principles will be applied. However, an industrial adjudicator is concerned more with the practice of the employer in securing work through temporary employment than with the mode of appointment adopted by the employer. If the practice of employing workmen as casual or temporary or on seasonal basis for years together were permitted either on the ground that there are no vacancies or posts or that there is no work for them for 3 to 5 months every year, or that the workmen are not qualified for regular recruitment, it may ensure for the employer full flexibility and freedom in deployment of labour, but it would amount to licence to exploit and would fly in the face of every constitutional aim, ideal, edict and obligation referred hereinabove. In the facts of the present case, the Industrial Tribunal could not have denied relief to the workmen after recording the finding that the workmen had completed 240 days of service and the employer had indulged in unfair labour practice by not allowing the workmen to complete in the same name even 180 days of service in 12 months so as to deny to them even the status of "temporary workmen". After identifying such workmen, numbering 189, who were not permitted to be discharged, as stated in para 2.3 herein, it was baseless and perverse for the Tribunal to observe that, ".....It was a fact admitted by both the sides that the work of the ONGC is seasonal". On the contrary, the record suggested that certain number of casual workers were retained as a part of the core team of the field parties even when majority of casual employees were employed on seasonal basis and permitted by the Tribunal to be discharged. In such circumstances, continuation of employment of the workmen concerned on "casual" and "seasonal" basis would amount to continuation of offences and violation of the provisions of the I.D.Act as may be elaborated now.

13. The only escape from the rigors of the "Special provisions relating to lay-off, retrenchment and closure in certain establishments" contained in Chapter V-B of the Industrial Disputes Act is when an industrial establishment is of a seasonal character or where work is performed intermittently. The premises at which the field parties work and carry out any operation for the purpose of searching for or obtaining minerals, which includes mineral oils, natural gas and petroleum, will be a "mine" within the meaning of Section 2 (1) (j) of the Mines Act, 1952 and hence an "industrial establishment"

for the purposes of the I.D.Act. In the facts of the present case, no evidence is led and no decision obtained about the establishment of ONGC being of a seasonal character or the one where work is performed intermittently as provided under sub-section (2) of Section 25-K. And, according to the certified Standing Orders, termination of services of all contingent employees is subject to the provisions of the I.D.Act. A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months automatically becomes a "temporary workman" by virtue of the provisions of Clause 2 (ii) of the Certified Standing Orders. Therefore, the workmen concerned could not have been treated as "casual" employees for the purposes of the restrictive and protective provisions of Chapter V-B of the I.D.Act and could not have been laid-off at the end of every "field season" as appears to have been done by the ONGC even during the prolonged period of litigation. Such illegality coupled with the finding of "unfair labour practice" legally entitled the workmen to regular employment and the aforesaid Standing Orders obliged the ONGC to consider such workmen for "conversion" as regular employee no sooner they completed 240 days of attendance in 12 consecutive months provided they possessed the minimum qualifications prescribed by the Commission. Obviously the "minimum qualifications" prescribed by the Commission can be in respect of particular posts and "conversion as regular employee" could be on such post for which the employee possesses minimum qualification and experience.

13.1 If the above statutory scheme is viewed and were applied in light of the observations of the Supreme Court in PIARA SINGH (supra) made in 1992, the whole litigation could have been avoided as desired by the Supreme Court. However, even now, in view of the observations made by Their Lordships of the Supreme Court in GUJARAT AGRICULTURAL UNIVERSITY (supra), availability of posts or vacancy thereon cannot be the issue since it was the obligation of the ONGC to regularise the services of the workmen concerned and it is a case of regularisation by "conversion" or "absorption" at the appropriate time rather than filling up permanent posts when vacancies arise on the establishment of the ONGC. Therefore, the impugned directions to treat the workmen concerned at par with other regular employees working against the corresponding or equivalent, equated or identical posts, regardless of availability of vacancies, was not only eminently just but legally due to the workmen. A rational and just scheme of regularisation was required

to be framed and implemented by the ONGC at least since the year 1992 and it does not lie in its mouth to say that the workmen concerned have to fulfil the requirements of age and minimum qualifications prevalent now or those prescribed in the Rules of 1996 by which year the workmen concerned would have, on an average, rendered services in more than ten "field seasons" or years.

14. The issue of regularization has two distinct shades of meaning in the peculiar facts of the present case. Generally regularization is sought when appointment of an employee is irregular in the sense that it is not in accordance with the recruitment rules or is arbitrary or is by way of a back-door entry. Regularization also means regular employment of an employee who was intermittently employed on casual, temporary, seasonal or such other irregular basis. In the facts of the present case, it is not the case of the ONGC that the workmen concerned were illegally or arbitrarily recruited, but its objection is that their regularization would violate its recruitment rules made for appointments on permanent posts. As for the intermittent and seasonal nature of employment and work, as against the evidence of continued employment and finding of unfair labour practice, the ONGC has not cared to establish by leading any evidence at any stage the requirement of dispensing with the services of the workmen concerned. Even when an application for permission to terminate the services of casual employees of the field parties was made in the reference pending before the Industrial Tribunal, while granting such permission for others, the services of the workmen concerned were saved. Thereafter, the ONGC never applied for such permission in respect of the workmen concerned but appears to have insisted upon employing them only during winter and summer for not more than 8 to 9 months in a year. Such practice apparently offends the

provisions of Chapter V-B of the I.D.Act. And, therefore, "regularization", in the context of the present case, would mean wages and treatment at par with the regular employees and employment throughout the year.

15. It was necessary to undertake the above exercise of examining the appeal on merits since we were not inclined to uphold the preliminary objection that the appeal was not maintainable for having been preferred from the judgment supposed to have been rendered in exercise of the powers of the High Court under Article 227 of the Constitution. On the one hand the original

petition of the respondent invoked both Articles 226 and 227 of the Constitution and, on the other hand, the impugned judgment nowhere specified Article 227 as the source of power in sole exercise of which the award of the Industrial Tribunal was modified. Therefore, under the circumstances, we reject the preliminary objection regarding maintainability of the appeal.

16. The contention of the appellant regarding continuity of service and attendance for requisite number of days in a year, however, requires consideration in moulding of the relief particularly because the impugned direction is supposed to be substituting the award with a direction to issue appropriate orders for all the employees by 30.4.1999. There is some substance in the argument of the appellant that, although no evidence was led before the Tribunal by the ONGC, the evidence led by the Union was sketchy and did not cover the entire period of service of each workman. It, however, appears to be the common ground and it is also evident from the record that the workmen concerned have been continuously and consistently employed by the ONGC in "field seasons" for not more than 8 to 9 months in each year. Even after the impugned direction of this Court and qualified injunction against its operation expressly excluding 156 specified workmen, they appeared to have been employed as "seasonal workers" by virtue of the interim orders referred in paragraph 5 hereinabove. The benefits to be granted were given prospective effect even as the Hon'ble Supreme Court in its order dated 16.2.2001 ordered that the benefits granted by the impugned judgment to the field workers should be made available to those 156 persons. That would literally mean grant of all benefits and treatment at par with other regular employees at least from the date of the impugned judgment. However, in fact, the workmen were not regularly employed and were not granted all the remaining benefits braving action under the Contempt of Courts Act. In such circumstances, it has to be decided as to from which date the workmen concerned should be entitled to the relief of treatment at par with the regular employees with all its consequences and ramifications.

16.1 As seen earlier, the workmen concerned appeared to have been working under the ONGC with its core teams and in its essential functions since the years 1981 to 1989. Therefore, they had already completed, by the year 1999, 10 to 15 years of service and they are not a homogenous mass of manual labourers. They are a heterogenous group of male and female qualified, skilled or semi-skilled clerks, typists, stenographers,

storekeepers, drivers, peons etc. equivalent to regular employees in Class III and Class IV, as stated at the Bar. It is also a fact that the workmen concerned have actually worked for not more than 6 to 8 months in a year during the pendency of the petition and this appeal and retrospective regularisation cannot bring back the months during which no services were rendered and no payment was made.

17. Therefore, following the long line of judgments of the Apex Court referred in paragraph 11 hereinabove, since the workmen had already completed 10 to 15 years of service, though intermittently, by the year 1999, and in view of the definite judicial direction having been given in the year 1999 only, it would be just to order that the workmen concerned shall be notionally treated as regularised with effect from 1.5.1999. Since most of the benefits are already accorded to the workmen since then and some of the benefits are withheld by the ONGC even as the workmen were continued to be employed on seasonal basis in the field parties under the interim orders, the actual full benefits at par with regular employees including all the perquisites and applicable allowances as also regular employment throughout the year shall start with effect from 1.5.2005. This will not derogate from the earlier interim orders and entitlements of the workmen based on actual employment during field seasons only. For all other purposes, except actual payment of wages and allowances in respect of the days or months during which the workmen did not work, they shall be treated to have been in regular employment of the ONGC since 1.5.1999, and their wages and allowances shall be fixed and paid accordingly with effect from 1.5.2005 The impugned directions in paragraph 15 (2) and the consequent order in paragraph 16 of the impugned judgment shall stand modified to that extent and the direction in paragraph 15 (1) shall stand deleted. The directions as hereby modified shall apply to the surviving 153 employees out of 156 employees in respect of whom the impugned judgment was not stayed during pendency of this appeal and to five other employees who are stated to have been originally included in the list of 189 workmen whose employment was saved by the order dated 30.5.1994 in Complaint (ITC) No.5 of 1993 and whose names were stated to have been, by mistake, excluded from the list of 156 workmen. Their names, date of entry in service and nature of work are stated to be:

1. Yogendra Prasad Samva Oct.1983 Survey Lineman

2.	Bijender Singh Negi	2.4.1984	Storekeeper
3.	Pratap Singh Mehra	06.11.85	Repairing of seismic accessories
4.	Rameshwar S. Sharma	05.11.76	Telecom Tech.
5.	Guruvender Singh Chawla	21.9. 87	Survey Lineman.

The appeal is accordingly partly allowed with no order as to costs. Civil Application No.11658 of 1999 filed in the appeal shall stand disposed as infructuous in view of the final orders in this appeal.

18. Before parting with the judgment, however, it may be apposite to observe that when not just any instrumentality of the State but a giant company with deep pockets, wages a long-drawn war against its own employees with legitimate claims and aspirations, it's managers ought to consult their own conscience and take the opportunity of doing justice themselves rather than adopting the strategy of wearing them out and draining their meagre resources in one after the other legal battles while they may be devoting better part of their lives to the organization. Even in the modern times of free-market economy and globalisation, the precept of recently departed Pope John Paul-II may be noted. His concept of globalisation was, "to ensure that the winner in this process will be humanity as a whole, not just a wealthy elite that controls science, technology, communication and the planet's resources to the detriment of the vast majority of its people". And according to Pope Benedict XVI; "The intrinsic dignity of each person must always be respected in work, in action and in law". A machine may be used as a more convenient substitute for a workman but a workman cannot be treated or switched on and off like a machine.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)

Upon the above judgment being pronounced, a request was made on behalf of the appellant that the operation of the judgment and the directions thereunder may be stayed for a period of ten weeks. We do not find any justification for granting such relief. Hence, the

request is rejected.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)